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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re	§	Chapter 11
	§	
MATTHEW B. MARTORELLO,	§	Case No. 24-90016-mxm-11
	§	
	§	
Debtor.	§	Expedited Hearing:
	§	October 23, 2024 at 10:30 a.m.
	§	

**MOTION TO APPROVE SETTLEMENT AGREEMENT AND RELEASE BETWEEN
THE DEBTOR, THE LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA
INDIANS, BIG PICTURE LOANS, LLC, EVENTIDE CREDIT ACQUISITIONS, LLC AND
CERTAIN OTHER LIMITED PARTIES TO THE SETTLEMENT AGREEMENT**

Emergency relief has been requested. Relief is requested not later than 10:30 a.m. on Wednesday, October 23, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on Wednesday, October 23, 2024 at 10:30 a.m. in Room 128, 1st Floor, U.S. Courthouse, 501 W. Tenth Street, Fort Worth, Texas 76102.

You may participate in the hearing either in person or by an audio and video connection. Audio communication will be by use of the Court's dial-in facility. You may access the facility at (650) 479-3207; Access Code 2310-650-8783. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Mullin's home page <https://us-courts.webex.com/meet/mullin>. The meeting code is 2310-650-8783. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge Mullin’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

TO THE HONORABLE MARK X. MULLIN, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Matthew Brandon Martorello (the “**Debtor**”) and files this *Motion to Approve Settlement Agreement and Release Between the Debtor, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Big Picture Loans, LLC, Eventide Credit Acquisitions, LLC and Certain Other Limited Parties to the Settlement Agreement* (the “**Motion**”). In support of this Motion, the Debtor respectfully represents as follows.

SUMMARY OF SETTLEMENT AGREEMENT

1. On October 17, 2024, Eventide Credit Acquisitions, LLC (“**Eventide**”) filed, in its chapter 11 case (Case No. 23-90007-mxm-1) a motion (the “**Eventide Settlement Motion**”) (Docket No. 396) to approve a global settlement among the Lac Vieux Desert Band of Lake Superior Chippewa Indians (the “**Tribe**”), Big Picture Loans, LLC (“**BPL**”), and Eventide (and together with the Tribe and BPL, the “**Settlement Parties**”), and the Debtor, Tribal Economic Development Holdings, LLC (“**TED**”), Ascension Technologies, LLC (“**Ascension**”), BWH Texas, LLC (“**BWH**”), Loeb & Loeb, LLP (“**Loeb Firm**”), Bernard R. Given, II (“**Given**”), Brophy & Bland, PLLC (“**BB Firm**”), and Joseph Brophy (“**Brophy**,” and together with the Debtor, BWH, TED, Ascension, Loeb Firm, Given, and BB Firm, the “**Limited Parties**”). The Settlement Parties and Limited Parties are also referred to collectively as the “**Parties**.” The terms of the settlement are reflected in the *Settlement Agreement and Release* (the “**Settlement Agreement**”),¹ a copy of which is attached hereto as **Exhibit A**. The Settlement Agreement would resolve all of the Pending Actions between the Parties, which are currently pending in the Bankruptcy Court, the District Court, and LVD Tribal Court, including claims asserted against the Debtor in the LVD Tribal Court.

2. The Debtor is a party to the Settlement Agreement, and by this Motion, asks the Court to

¹ Any capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Settlement Agreement.

approve the Settlement Agreement as it relates to his estate.

3. As described in the Eventide Settlement Motion, the basic terms of the Settlement Agreement² are as follows: (i) the Tribe agrees to pay a “**Settlement Amount**” of \$16,886,983.71 to Eventide consisting of a payment of \$1.5 million upon the approval of the settlement by the Bankruptcy Court and the entry of the Condemnation Judgment by the LVD Tribal Court, a payment of \$1 million on May 1, 2025, and the payment of \$14,386,983.71 over forty-eight (48) months at 3.7% interest commencing November 1, 2024 (Settlement Agreement, ¶2); (ii) Eventide agrees to the entry of the Condemnation Judgment by the LVD Tribal Court, which also requires the Tribe to pay the Settlement Amount to Eventide on the same terms as the Settlement Agreement as “just compensation” for the condemnation of the Note and LSA (Settlement Agreement, ¶8);³ (iii) the Tribal Parties consent to the jurisdiction of the Bankruptcy Court for matters relating to the enforcement of the Settlement Agreement, and agree to broad waivers of sovereign immunity and the right to tribal exhaustion or litigation in a Tribal Forum (Settlement Agreement, ¶¶ 10-14); (iv) the Parties agree to broad mutual releases between the Tribal Parties, on the one hand, and Eventide and the Eventide Limited Parties, including the Debtor, on the other (Settlement Agreement, ¶9); (v) the collection of Payments under the Settlement Agreement and any enforcement thereof will be handled by Daniel J. Sherman, Esq., as an independent “**Collection Agent**” with strict fiduciary duties to the Eventide Estate, who will hold the funds in a separate IOLTA account pending the entry of appropriate orders by the Bankruptcy Court regarding the

² The general description of the Settlement Agreement contained herein is for illustrative purposes and subject, in its entirety, to the express terms of the Settlement Agreement, which are controlling over the general description of such agreement in this Motion.

³ Although referenced in both the Settlement Agreement and the Condemnation Judgment, Eventide is only entitled to a single satisfaction of the Settlement Amount and payments pursuant to the Condemnation Judgment shall be credited as payments pursuant to the Settlement Agreement, and vice versa.

disbursement of funds (Settlement Agreement, ¶7); (vi) BPL will make information regarding the identity of its consumer borrowers (“Consumer Borrowers”) available to a claims/noticing/balloting agent⁴ for any of the Eventide Released Parties, including the Debtor, so that appropriate notices can be sent to the Consumer Borrowers in the bankruptcy cases filed by any of the Eventide Released Parties, including the Debtor’s case (Settlement Agreement, ¶17); and (vii) the applicable Parties will dismiss all Pending Actions in the Bankruptcy Court, District Court, and LVD Tribal Court (Settlement Agreement, ¶16).

4. For the reasons set forth herein and in the Eventide Settlement Motion, which the Debtor adopts and incorporates herein, the Debtor asserts the settlement is in the best interests of his bankruptcy estate and should be approved.

JURISDICTION AND VENUE

5. The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought in this Motion are sections 105(a) of the Bankruptcy Code and Fed. R. Bankr. P. 9019.

PROCEDURAL AND FACTUAL BACKGROUND

6. On September 20, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

7. The Debtor is managing his property as debtor-in-possession pursuant to section 1107(a) of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

8. The Debtor is an “affiliate” of Eventide because he indirectly owns or controls

⁴ The Settlement Agreement provides that the Consumer Borrower Information will be made available to either American Legal Claims Services or Donlin Recano & Company, Inc., as the noticing agent for any of the Eventide Released Parties.

more than 20% of its voting member interests. He is also the Manager of Eventide.

9. As described in the Eventide Settlement Motion, the Settlement Agreement resolves all pending matters and disputes between Eventide and BPL in the Bankruptcy Court and on appeal in the District Court, which includes numerous matters as outlined in the Eventide Settlement Motion. It likewise resolves matters between Eventide and the LVD Tribe, in both the LVD Tribal Court and this Court, relating to the LVD Tribe's Complaint for Condemnation.

10. With respect to the Debtor, on August 28, 2024, BPL filed a complaint in LVD Tribal Court against the Debtor as well as against Loeb Firm, Given, BB Firm, and Brophy (the "LVD Tribal Court Action"). The LVD Tribal Court Action is pending as Case No. Case No. 24-cv-05 in LVD Tribal Court.

6. On October 17, 2024, after approximately six weeks of negotiations, the Parties entered into the Settlement Agreement attached hereto as **Exhibit A**. The Settlement Agreement would result in dismissal with prejudice of the LVD Tribal Court Action against the Debtor.

7. The Debtor believes the Settlement Agreement is in the best interests of the Eventide Estate for all the reasons explained in the Eventide Settlement Motion. The Debtor also believes the Settlement Agreement is in the best interests of his estate for the reasons explained below.

RELIEF REQUESTED

8. Through this Motion, the Debtor seeks: (i) approval of the Settlement Agreement described herein, (ii) entry of the proposed order granting the Motion (the "Settlement Approval Order"), which will be filed as a supplement to the Motion, (iii) the waiver of any stays applicable to the finality of the Settlement Approval Order, including under Fed. R. Bankr. P. 4001(a)(3) and 6004(h); and (iv) all such further relief to which the Debtor may be justly entitled.

BASIS FOR RELIEF REQUESTED

9. As discussed in summary fashion above, if approved, the Settlement Agreement: (i) provides consideration of \$16,886,983.71 to the Eventide Estate, as provided in the Settlement Agreement; (ii) permits the condemnation of the Note and LSA by the LVD Tribal Court; (iii) includes consents to the jurisdiction of the Bankruptcy Court and broad waivers of sovereign immunity and the right to tribal exhaustion or litigation in a Tribal Forum by the Tribal Parties for any claim to enforce the obligations in the Settlement Agreement, Settlement Approval Order, and Condemnation Judgment in the event of a default in the payment of the Settlement Amount, (iv) includes broad mutual releases between the Tribal Parties, on the one hand, and Eventide and the Eventide Limited Parties, including the Debtor, on the other; (v) provides for the collection and enforcement of the payments under the Settlement Agreement by an independent Collection Agent for the Eventide Estate Fiduciary; (vi) enables a Noticing Agent for any of the Eventide Released Parties, including the Debtor, to obtain access to information needed to provide notice to the Consumer Borrowers in Eventide's bankruptcy case, the Debtor's bankruptcy case and in any other Eventide Released Party Bankruptcy Case; and (vii) resolves all of the Pending Actions involving the Parties before the Bankruptcy Court, District Court, and LVD Tribal Court.

A. *Cajun Electric Factors*

10. The Debtor submits that the terms of the Settlement Agreement are fair and equitable, and that its approval is in the best interests of creditors and the Debtor's estate.

11. Bankruptcy Rule 9019(a) generally governs settlements in bankruptcy cases. It provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Rule 9019(a) empowers the Bankruptcy Court to approve a compromise and settlement if it is (a) fair and equitable, and

(b) in the best interest of the estate. *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Mirant*, 348 B.R. 725, 738 (Bankr. N.D.Tex. 2006); *Connecticut Gen. Life Ins. Co. v. United Co. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F. 3d 914, 917 (5th Cir. 1995). Moreover, Bankruptcy Code Section 105(a) states “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

12. The decision to approve a compromise or settlement is within the sound discretion of the Bankruptcy Court. *See* 9 COLLIER ON BANKRUPTCY ¶ 9019.02 (16th ed. rev. 2016). “Compromises are favored in bankruptcy” because they minimize litigation costs and expedite the administration of the bankruptcy estate. *In re Idearc Inc.*, 423 B.R. 138, 182 (Bankr. N.D. Tex. 2009) (*citing Martin v. Martin*, 91 F.3d 389, 393 (3d Cir. 1996)). The Bankruptcy Court, however, should not substitute its own judgment for the judgment of a trustee or a debtor. *See In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985). “One of the goals of Congress in fashioning the Bankruptcy Code was to encourage parties in a distress situation to work out a deal among themselves.” *In re Mirant Corp.*, 334 B.R. 800, 811 (Bankr. N.D. Tex. 2005). Thus, in assessing a settlement, a court need only “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

13. In this Circuit, a bankruptcy settlement should be approved under Rule 9019 “if the settlement is ‘fair and equitable and in the best interests of the estate.’” *See In re Cajun Electric*, 119 F.3d 349, 355 (5th Cir 1977). In deciding whether a proposed settlement is fair and equitable, the Court should analyze the following four factors (the “Cajun Electric Factors”):

- (a) The probability of success in the litigation;
- (b) The complexity and likely duration of the litigation, any attendant expense, inconvenience or delay, and possible problems collecting a judgment;
- (c) The interests of creditors with proper deference to their reasonable views; and
- (d) The extent to which the settlement is truly the product of arm's length negotiations.

Mirant, 348 B.R. at 739-40 (citing *Cajun Electric Power Coop., Inc.*, 119 F.3d at 355-56) (citations omitted)).

14. As set forth in detail in the Eventide Settlement Motion, the terms of the Settlement Agreement satisfy the Cajun Electric Factors, and the Settlement Agreement is in the best interests of the Eventide estate.

15. From the perspective of the Debtor's estate, the Debtor has indemnification rights against Eventide and is perhaps Eventide's only undisputed creditor. The maximization of recoveries by the Eventide estate is unquestionably also in the best interests of the Debtor's estate. And the Debtor believes that, under the circumstances and given the uncertainties and costs of litigation, and for the reasons explained in the Eventide Settlement Motion, the Settlement Agreement is in the best interests of Eventide's undisputed creditors, including the Debtor.

16. In addition to the indirect benefits through the Eventide estate, the Settlement Agreement provides direct benefits to the Debtor's estate. The Settlement Agreement enables a Noticing Agent for the Debtor to obtain access to information needed to provide notice to the Consumer Borrowers in the Debtor's bankruptcy case. The Settlement Agreement also requires certain findings by the Court, including that Eventide's payment or distribution of any funds received from the LVD Tribe (to the Debtor or otherwise), is not unlawful, protecting the Debtor from liability in respect of any Eventide distributions of proceeds from the Settlement Agreement

to the Debtor.

17. The Settlement Agreement also results in the dismissal with prejudice of the LVD Tribal Suit against the Debtor, which included a claim for purported fraud. While the Debtor does not believe that claim has any merit, the LVD Tribe consistently expressed its intent to pursue the claim and its belief that the claim is non-dischargeable. Even if the claim has no merit, the Debtor's estate could incur substantial fees litigating the claim.

18. The Settlement Agreement requires that the Debtor and the Tribal Parties mutually release all claims against each other. The Debtor's release would include any potential contribution claims against the Tribal Parties. Although the Debtor believes that one or more of the Tribal Parties should bear a portion of the responsibility if the Debtor is in fact ultimately determined to have liability in respect of BPL's lending activities, the ability to collect on any potential contribution claim against BPL or any of the other Tribal Parties would be challenging and likely very costly as already demonstrated by the immense difficulties Eventide faced in collecting on the Note. Accordingly, on balance, given all the benefits to the Debtor's estate of the Settlement Agreement, both directly and indirectly through Eventide, the Debtor in his business judgment submits that the approval of the Settlement Agreement is in the best interests of his estate and creditors.

19. As explained in the Eventide Motion, the probability of success in litigation, the complexity and likely duration of the litigation, the interests of creditors, and the extensive arms' length negotiations all support approval of the Settlement Agreement.

20. Based on the foregoing, the Settlement Agreement meets the applicable standards for approval, is fair and equitable, is in the best interest of the creditors and the Debtor's estate, and represents the exercise of sound and prudent business judgment.

B. Waiver of Stays Applicable to Settlement Approval Order

21. For all the reasons explained in the Eventide Settlement Motion, the Debtor requests that the Court waive, and submits that good cause exists for the Court to waive, any stays applicable to the finality of the Settlement Approval Order, including under Fed. R. Bankr. P. 4001(a)(3) and 6004(h).

C. Settlement Approval Order

22. Given the exigencies that exist and the need to submit the motions for approval of the Settlement Agreement as quickly as possible, this Motion has been filed before the Parties have finalized the language of the Settlement Approval Orders. The Debtor plans to file the Settlement Approval Order as a supplement to the Motion. The form of the Settlement Approval Order will still be filed in plenty of time for the Court and parties-in-interest to review it prior to the Court's consideration of the Motion.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Debtor respectfully requests that the Court grant the Motion, enter the Settlement Approval Order, and grant the Debtor such other further relief as is necessary and proper.

Dated: October 18, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion (with all referenced exhibits) to be served via the Bankruptcy Court's CM/ECF system on those parties requesting such electronic notice, and upon the attached service list via United States mail, first class postage prepaid, on October 18, 2024.

/s/ Daniel P. Winikka

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Comenity Capital Bank
Attn: Bankruptcy Dept
PO Box 183043
Columbus, OH 43218-3043

Target Card Services
Attn: Bankruptcy Dept
PO Box 673
Minneapolis, MN 55440

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Discover Card
Attn: Bankruptcy Dept
PO Box 3025
New Albany, OH 43054-3025

First National Bank of Omaha
Attn: Bankruptcy Dept
PO Box 3412
Omaha, NE 68103-0412

American Express
Attn: Bankruptcy Dept
PO Box 981535
El Paso, TX 79998-1535

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Martorello 2023 Children's Trust
3805 Greenbrier Dr.
Dallas, TX 75225

BVNT Children's Trust 1
215 Fulton Ave
St. Charles, IL 60174

BVNT Children's Trust 2
215 Fulton Ave
St. Charles, IL 60174

BVNT Childrens, LLC
215 Fulton Ave
St. Charles, IL 60174

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Kairos Holdings, LLC
3805 Greenbrier Dr.
Dallas, TX 75225

GFLP Entity 1, LP
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Milwaukee, WI 53201-3115

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Dallas, TX 75225

Martorello 2018 Children's Trust
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Dallas, TX 75225

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RLM Management Trust
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